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15 *Attorneys for Plaintiff and*  
16 *Collective Class Members*

17 UNITED STATES DISTRICT COURT  
18 DISTRICT OF NEVADA

19 ALBERTO DELARA, on behalf of himself and  
others similarly situated,

20 Plaintiff,

21 v.

22 DIAMOND RESORTS INTERNATIONAL  
23 MARKETING, INC.,

24 Defendant.

Case No. 2:19-cv-00022-APG-NJK

STIPULATION AND ORDER  
PARTIALLY MODIFYING THE  
FEBRUARY 2, 2021 SCHEDULING  
ORDER TO EXTEND THE JOINT  
PROPOSED PRETRIAL ORDER  
DEADLINE (ECF NO. 135)

(SECOND REQUEST FOR  
MODIFICATION OF THE JOINT  
PROPOSED PRETRIAL ORDER  
DEADLINE)

1 Plaintiff Alberto Delara, on behalf of himself and others similarly situated (collectively  
 2 “Plaintiff”), and Defendant Diamond Resorts International Marketing, Inc. (Plaintiff and  
 3 Defendant are collectively referred to as “the Parties”), by and through their respective counsel,  
 4 hereby submit this Stipulation and Order Modifying the Discovery Plan and Scheduling Order in  
 5 compliance with Local Rule 26-4. This is the Parties’ second request to extend the joint proposed  
 6 pretrial order deadline contained in the Court’s February 2, 2021 Order (ECF No. 135). The Parties  
 7 HEREBY STIPULATE AND AGREE as to the following:

8 1. After this matter was stayed so the Parties could engage in mediation, which was  
 9 unsuccessful, the Parties briefed their positions regarding proposed deadlines. Thereafter, the  
 10 Court entered an Order on February 2, 2021, containing modified deadlines for expert disclosures,  
 11 the completion of discovery, the filing of dispositive motions and the filing of the joint proposed  
 12 pretrial order. ECF No. 135, Order. The deadline to file the joint proposed pretrial order was  
 13 August 30, 2021, or 30 days after resolution of dispositive motions. *Id.* at 2.

14 2. On March 1, 2021, Defendant filed a Motion to Dismiss certain Opt-in Plaintiffs,  
 15 arguing that said individuals were bound by an arbitration agreement and they could not pursue  
 16 their claims in this action. ECF No. 139, Def’s. Motion. The matter was fully briefed by the  
 17 Parties. ECF No. 140, Pl’s. Resp.; and ECF No. 143, Def’s. Reply.

18 3. On December 27, 2021, the Court entered an Order granting, in part, Defendant’s  
 19 Motion to Dismiss on the arbitration issue. ECF No. 181, Order. In the Order, the Court compelled  
 20 numerous Opt-in Plaintiffs to arbitration. The Court, however, denied Defendant’s request to  
 21 dismiss these individuals’ claims; instead, retaining jurisdiction and staying their claims. *Id.*

22 4. On March 19, 2021, Defendant filed a Motion for Summary Judgment, or in the  
 23 Alternative, Partial Summary Judgment of the Named Plaintiff and Certain Opt-in Plaintiffs,  
 24 arguing that: 1) certain Opt-in Plaintiffs’ claims were barred by virtue of a prior class action  
 25 settlement; 2) certain Opt-in Plaintiffs’ claims were barred due to prior individual settlements; 3)  
 26 Plaintiff Delara and certain Opt-in Plaintiffs’ claims were barred due to their bankruptcy filings;

1 and 4) certain Opt-in Plaintiffs' claims were time-barred. ECF No. 141, Def's. MSJ. Defendant's  
2 Motion was fully briefed by the Parties. ECF No. 146, Pl's. Resp.; and ECF No. 150, Def's. Reply.

3 5. On December 27, 2021, the Court entered an Order granting, in part, Defendant's  
4 Motion for Summary Judgment or in the Alternative, Partial Summary Judgment. ECF No. 182,  
5 Order. As it relates to the portion of Defendant's Motion to Dismiss certain Opt-in Plaintiffs due  
6 to bankruptcy filings, the Court ordered that the Parties should determine which Opt-in Plaintiffs  
7 were dismissed for lack of standing and within 45 days of the December 27, 2021 Order, file either  
8 a stipulation to dismiss them or a notice with their identities so that the Court could enter an order  
9 of dismissal as to them. The Court further ordered that should the Parties disagree as to the  
10 dismissal of any Opt-in Plaintiff, they could file an appropriate motion. *Id.* at 7.

11 6. On April 26, 2021, Plaintiff filed a Motion for Partial Summary Judgment, arguing  
12 that there were no genuine issue of material facts and that as a matter of law Defendant had  
13 improperly calculated overtime in violation of the FLSA. Further, Plaintiff argued that as a matter  
14 of law, Plaintiff and Opt-in Plaintiffs were entitled to an equal amount in liquidated damages under  
15 the FLSA because Defendant did not act in good faith, and further, they were entitled to a three-  
16 year recovery period under the FLSA because Defendant acted willfully. ECF No. 149, Pl's.  
17 Partial MSJ. Plaintiff's Motion was fully briefed by the Parties. ECF No. 151, Def's. Resp.; ECF  
18 No. 156, Pl's. Reply.

19 7. On July 30, 2021, Plaintiff filed a Motion for Partial Summary Judgment, arguing  
20 that there were no genuine issue of material facts and that as a matter of law Defendant could not  
21 prevail on its Affirmative Defense that Plaintiff and Opt-in Plaintiffs were exempt from the  
22 overtime requirements contained in the FLSA by virtue of 29 U.S.C. § 207(i). ECF No. 163, Pl's.  
23 Partial MSJ. Plaintiff's Motion was fully briefed by the Parties. ECF No. 174, Def's. Resp.; ECF  
24 No. 178, Pl's. Reply.

25 8. On July 30, 2021, Defendant filed a Motion for Summary Judgment or, in the  
26 Alternative, Partial Summary Judgment, arguing that there were no genuine issue of material facts  
27 and that as a matter of law: 1) Defendant was a retail establishment exempt from the overtime  
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1 requirements contained in the FLSA by virtue of 29 U.S.C. § 207 (i); and 2) that even if Defendant  
2 was not a retail establishment, Defendant acted in good faith such that any damages were  
3 inappropriate under 29 U.S.C. § 207(i), and likewise, liquidated damages were inappropriate under  
4 29 U.S.C. § 260. ECF No. 160, Def's. MSJ. Defendant's Motion was fully briefed by the Parties.  
5 ECF No. 175, Pl's. Resp.; ECF No. 177, Def's. Reply.

6 9. On December 27, 2021, the Court entered an Order granting, in part, Plaintiff's  
7 Motion for Summary Judgment on the miscalculation of overtime issue. ECF No. 183. In its  
8 Order, while the Court held that Defendant improperly calculated overtime for its concierges, the  
9 Court held that genuine issues of material fact existed on the issues of whether Defendant acted in  
10 good faith to avoid liquidated damages under the FLSA. The Court also held that genuine issues  
11 of material fact existed on the issue of whether Defendant acted willfully under the FLSA. *Id.* at  
12 5-7.

13 10. On January 10, 2022, Plaintiff filed a Motion to Reconsider the Court's Order (ECF  
14 No. 183), denying Plaintiff's Motion for Summary Judgment on the issues of good faith (liquidated  
15 damages) and willfulness under the FLSA. ECF No. 185. Plaintiff's Motion was fully briefed by  
16 the Parties. ECF No. 186, Def's Resp.; ECF No. 190, Pl's Reply.

17 11. By Order entered February 2, 2022, the Court denied Plaintiff's Motion for  
18 Reconsideration. ECF No. 191.

19 12. On February 10, 2022, the Parties filed a stipulation with the Court as to those Opt-  
20 in Plaintiffs whose claims were dismissed, or in the alternative, file their respective motions in the  
21 event of a dispute. ECF No. 192. On February 11, 2022, the Court granted the Parties' Stipulation  
22 of Dismissal. ECF No. 193.

23 13. Based on the Court's Order granting, in part, Defendant's Motion to Dismiss on the  
24 arbitration issue, which includes numerous Opt-in Plaintiffs, the parties have been conferring as to  
25 how the case should proceed given that the Court did not dismiss these individuals from this action,  
26 but instead, stayed their claims and retained jurisdiction.

1           14.     On January 25, 2022, the Parties filed a Stipulation and Order Partially Modifying  
2 Scheduling Order requesting to continue the joint proposed pretrial order deadline to allow: (1) the  
3 Court to rule on Plaintiff's Motion for Reconsideration; (2) the Parties to continue efforts to  
4 determine which Opt-in Plaintiffs and Hawaii Class Members' claims were barred based on their  
5 bankruptcy filings; and (3) the Parties to continue conferring as to how the case should proceed  
6 given that the Court did not dismiss individuals who were compelled to arbitration from this action,  
7 but instead, stayed their claims and retained jurisdiction. ECF No. 187, Stipulation.

8           15.     On January 26, 2022, the Court granted in part and denied in part the Parties'  
9 Stipulation and Order Partially Modifying Scheduling Order. The Court extended the deadline for  
10 filing the proposed pretrial order to March 28, 2022. ECF No. 188, Order.

11           16.     During the Parties' discussions conferring regarding how the case should proceed  
12 given that the Court did not dismiss the individuals compelled to arbitration from this action, but  
13 instead, stayed their claims and retained jurisdiction to allow them to return to this case should  
14 they successfully challenge the enforceability of the arbitration agreement in arbitration,  
15 Defendant's counsel inquired regarding whether Plaintiff's counsel would agree to stay this case  
16 until any challenges to the arbitration agreement conclude in arbitration. The Parties were unable  
17 to reach an agreement on this issue.

18           17.     On March 12, 2022, Defendant filed an Emergency Motion to Stay All Proceedings  
19 in which Defendant requested that the Court grant its emergency Motion to Stay All Proceedings  
20 until the arbitrators determine the arbitration agreement's enforceability as to the potential  
21 arbitration claimants. Defendant's Motion seeks a stay from the Court to clarify the scope of the  
22 pretrial order and trial based upon the possibility that potential arbitration claimants could return  
23 to federal court to try their portions of this collective and class action *after* the Parties have filed  
24 their proposed pretrial order and even after the Parties have tried the case. ECF No. 195, Def's.  
25 Motion. The Court ordered Plaintiff to file a response by March 18, 2022, and Defendant to file a  
26 reply by March 22, 2022. ECF No. 196, Order. Defendant's Emergency Motion has been fully  
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1 briefed by the Parties. ECF No. 197, Pl's. Resp.; ECF No. 198, Def's. Reply. Defendant contends  
2 that a ruling on their Emergency Motion is necessary before preparing for trial.

3 18. In and since January 2022, the Parties have been discussing scheduling another  
4 private mediation to explore potential resolution of this matter. The mediator who conducted the  
5 mediation in December 2020 has no availability until Fall 2022 and indicated he does not anticipate  
6 any openings due to his need to reschedule mediations onto dates that were previously left open  
7 for emergencies. The Parties have been discussing other potential mediators and although such  
8 mediators' calendars are also booked for several months ahead, the Parties requested to be placed  
9 on waiting lists for any mediation cancellations. On March 14, 2022, the Parties were able to  
10 schedule mediation to take place with David Rotman, an experienced class action mediator, on  
11 April 6, 2022.

12 19. On March 18, 2022, the Parties agreed that their resources would be better spent  
13 preparing for mediation than continuing to prepare to file the proposed pretrial order on March 28,  
14 2022.

15 20. Based on the foregoing, the Parties submit that good cause exists to extend the joint  
16 proposed pretrial order deadline for a period of 30 days after the Parties' mediation scheduled for  
17 April 6, 2022, which is May 6, 2022.

18 IT IS SO STIPULATED this 23rd day of March, 2022.  
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Based on the Parties' stipulations, and for good cause shown, it is hereby ORDERED that the joint proposed pretrial order shall be filed within 30 days after the Parties' April 6, 2022 mediation, or on or before May 6, 2022).

IT IS SO ORDERED:

  
NANCY J. KOPPE  
United States Magistrate Judge

DATED: March 24, 2022